

PE .ITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

File No. 5:99CV144-1-V

FILED
STATESVILLE, N.C.

Name: Robert Charles Bragg

Prison Number: 0525656

SEP 15 1999

Place of Confinement: Johnson County Correctional Center
2465 U.S. 70 West
Smithfield, North Carolina 27577

**U.S. DISTRICT COURT
W. DIST. OF N.C.**

Robert Charles Bragg
PETITIONER

v.

Loomis Woodard, Superintendent
RESPONDENT

and THE ATTORNEY GENERAL OF THE STATE OF NORTH CAROLINA

PETITION

1. Name and location of court which entered the judgment of conviction under attack:
Watauga Superior Court, Boone, North Carolina

2. Date of judgment of conviction:
February 26, 1996

3. Length of sentence:
Life

4. Nature of offense involved (all counts):
First Degree Felony Murder

5. What was your plea? (Check one): (a) Not guilty ☒
(b) Guilty ☐
(c) Nolo Contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one): (a) Jury ☒
(b) Judge only ☐

7. Did you testify at the trial? (Check one) Yes ☐
No ☒

8. Did you appeal from the judgment of conviction? (Check one) Yes ☒

9. If you did appeal, answer the following:

- (a) Name of court - North Carolina Court of Appeals
- (b) Result - Conviction Affirmed
- (c) Date of result and citation (if you know) - February 17, 1998; 496 S.E. 2d 851
- (d) Grounds raised - *Inter alia*, failure to perform in camera inspection of medical and psychological records of prosecuting witness and exclusion of prior inconsistent statement of prosecuting witness.
- (e) If you sought further relief of the decision on appeal by a higher court, please answer the following:

- (1) Name of court - North Carolina Supreme Court
- (2) Result - Certiorari denied
- (3) Date of result and citation (if you know) - June 24, 1999

(4) Grounds raised - *Inter alia*, failure to perform in camera inspection of medical and psychological records of prosecuting witness and exclusion of prior inconsistent statement of prosecuting witness.

- (f) If you filed a petition for a writ of certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court
- (2) Result
- (3) Date of result and citation (if you know)
- (4) Grounds raised

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? (Check one)

Yes ☐

No: ☒

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court
- (2) Nature of proceeding
- (3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion? (Check one)

Yes ☐

No: ☐

(5) Result

(6) Date of result

(b) As to any second petition, application or motion, give the same information:

(1) Name of court

(2) Nature of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition application or motion? (Check one)

Yes ☐

No: ☐

(5) Result

(6) Date of result

(c) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion? (Check all that apply)

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. ***However, you should raise in this petition all available grounds***(relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (i) or any one of these grounds.

(1) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

- (2) Conviction obtained by use of coerced confession.
 - (3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
 - (4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
 - (5) Conviction obtained by a violation of the privilege against self-incrimination.
 - (6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
 - (7) Conviction obtained by a violation of the protection against double jeopardy.
 - (8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
 - (9) Denial of effective assistance of counsel.
 - (10) Denial of right of appeal.
- (a) Ground one:
Conviction obtained by the unconstitutional failure of trial judge to inspect records which probably contained exculpatory evidence.

Supporting FACTS (state *briefly*, without citing cases or law)

The state's most important witness had received extensive mental health treatment, was borderline mentally retarded, and there was medical testimony on voir dire that he was unable to testify truthfully. Petitioner issued a subpoena for his mental health records, but the trial court refused an *in camera* review.

- (b) Ground two:
Conviction obtained by the unconstitutional exclusion by the trial judge of prosecution witness's prior inconsistent statement.

Supporting FACTS (state *briefly*, without citing cases or law)

Shawn Delp overheard the state's most important witness state Petitioner had nothing to do with the murder, that Petitioner did not deserve it, and that Greg was with him at the time of the murder. The trial court excluded this evidence.

- (3) Ground three:

Supporting FACTS (state *briefly*, without citing cases or law)

(d) Ground four:

Supporting FACTS (state *briefly*, without citing cases or law)

13. If any of the grounds listed in 12(a), (b), (c), and (d) were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them.
14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? (Check one) Yes ☐ No ☒
15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
- (a) At preliminary hearing
- (b) At arraignment and plea
- (c) At trial - Vincent Gable and Jeffery M. Hedrick, Boone, North Carolina

(d) At sentencing - same as (c)

(e) On appeal- Jeffery M. Hedrick, Boone, North Carolina

(f) In any post-conviction proceeding

(g) On appeal from any adverse ruling in a post-conviction proceeding

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? (Check one) Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? (Check one) Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future.

(b) Give date and length of the above sentence.

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? (Check one) Yes ☐ No ☐

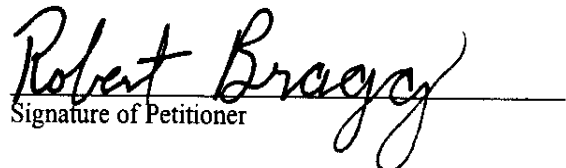
Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.



J. Phillip Griffin NCSB 14436
North Carolina Prisoner Legal Services
P.O. Box 25397
Raleigh, North Carolina 27611
(919) 856-2200

I declare under penalty of perjury that the foregoing is true and correct. Executed on

8-19-99
(Date)


Signature of Petitioner